

“If any such ditch or drain shall be located through or across the right-of-way or other land of a railroad company, the trustees shall determine the cost of constructing the same across and through such property and the railroad company shall have the privilege of constructing such improvement through its property in accordance with the specifications made by the trustees and recover the cost thereof as fixed by the trustees. But such railroad company before it may exercise such privilege shall file its election to that effect with the township clerk within five (5) days after the decision of the trustees is filed, and in case such election is filed the applicant shall within ten (10) days thereafter pay to the township clerk for the use of the railroad company, the cost of constructing the drainage improvement through its property, in addition to the amount that may be allowed as damages; and when the railroad company shall have completed the improvement through its property in accordance with such specifications it shall be entitled to demand and receive from the township clerk such cost. If the railroad company shall fail to so construct the improvement for a period of thirty (30) days after filing its election so to do, the applicant may proceed to do so and may have returned to him the cost thereof deposited with the township clerk.”

Approved April 16, A. D., 1909.

CHAPTER 118.

LEVEES, DITCHES, DRAINS, WATER COURSES AND DRAINAGE DISTRICTS.

H. F. 495.

AN ACT to amend the law as it appears in sections nineteen hundred eighty-nine-a two (1989-a2), nineteen hundred eighty-nine-a five (1989-a5), nineteen hundred eighty-nine-a six (1989-a6), nineteen hundred eighty-nine-a seven (1989-a7), nineteen hundred eighty-nine-a eight (1989-a8), nineteen hundred eighty-nine-a ten (1989-a10), nineteen hundred eighty-nine-a twelve (1989-a12), nineteen hundred eighty-nine-a thirteen (1989-a13), nineteen hundred eighty-nine-a fourteen (1898-a14), nineteen hundred eighty-nine-a sixteen (1989-a16), nineteen hundred eighty-nine-a eighteen (1989-a18), nineteen hundred eighty-nine-a twenty-two (1989-a22), nineteen hundred eighty-nine-a twenty-nine (1989-a29), nineteen hundred eighty-nine-a thirty-two (1989-a32), nineteen hundred eighty-nine-a thirty-five (1989-a35), nineteen hundred eighty-nine-a forty-four (1989-a44), of the supplement to the code, 1907, and to repeal sections nineteen hundred eighty-nine-a three (1989-a3), nineteen hundred eighty-nine-a eleven (1989-a11) and nineteen hundred eighty-nine-a nineteen (1989-a19) of the supplement to the code, 1907, and enact substitutes therefor; and to enact sections of law additional to chapter two-a (2-a) of title ten (X) of the supplement to the code, 1907. All relating to the subject of waters, water courses, levees, drains, and drainage districts.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Lands benefited included in surveyor's report. That the law as it appears in section nineteen hundred eighty-nine-a2 (1989-a2) of the supplement to the code, 1907, be amended by inserting after the word “district”, in line thirty, the following: “so as to include therein all lands that will be benefited by the proposed improvements”.

SEC. 2. Survey and location. That the law as it appears in section nineteen hundred eighty-nine-a2 (1989-a2) of the supplement to the code, 1907, be amended by inserting after the word “shall” in line thirty-six, the words, “so far as practicable”; also by striking out from lines thirty-nine and forty of said section the words, “having due regard for straightening and shortening of such natural streams, water courses, and course of natural drainage”, and inserting in lieu thereof the following: “but where it will be more economical or practicable such ditch or drain need not follow the course of such natural streams,

water courses, or course of natural drainage, but may straighten, shorten or change the course of any natural stream, water course or general course of drainage"; also by inserting after the word "shall" in the forty-first line, the words, "when practicable".

SEC. 3. Repeal—notice of hearing— approval of plan—hearing postponed. That the law as it appears in section nineteen hundred eighty-nine-a3 (1989-a3) of the supplement to the code, 1907, be repealed and the following substituted in lieu thereof:

"Upon the filing of the return of the engineer, if the same recommends the establishment of the levee or drainage district, the board of supervisors shall then examine the return of the engineer, and if the plan seems to be expedient and meets with the approval of the board of supervisors, they shall direct the auditor to cause a notice to be given, as hereinafter provided. But if it does not appear to be expedient and is not approved, the board of supervisors are hereby authorized to direct said engineer, or another engineer, selected by them, to report another plan. At any time prior to the establishment of the district, the plan may be amended, and as amended shall be conclusive, unless appealed from as provided in section nineteen hundred eighty-nine-a6 (1989-a6) of this chapter. When the plan, if any, shall have been finally adopted by the board of supervisors, they shall order the auditor immediately thereafter to cause notice to be given to the owner of each tract of land or lot within the proposed levee or drainage district, as shown by the transfer books of the auditor's office, including railway companies having rights of way in the proposed district, and to each lien holder or encumbrancer of any land through which or abutting upon which the proposed improvement extends as shown by the county records, and also to all other persons whom it may concern, including actual occupants of the land in the proposed district, (without naming individuals), of the pendency and prayer of said petition, the favorable report thereon by the engineer and that such report may be amended before final action, the day set for hearing on said petition and report before the board of supervisors, and that all claims for damages must be filed in the auditor's office not less than five days before the day set for hearing upon the petition, which notice shall be served by publication thereof once each week for two consecutive weeks in some newspaper of general circulation published in the county, the last of which publications shall be not less than twenty days prior to the day set for hearing upon the petition, proof of such service to be made by affidavit of the publisher and filed with the county auditor. No notice need be served by the auditor upon any of the persons hereinbefore described who shall file with said auditor a statement in writing signed by him entering his appearance at said hearing and waiving any additional notice. If, at the date set for the hearing before the board of supervisors, it should appear that any person entitled to notice, as provided in this section, has not been served with notice for the time, or in the manner, as herein provided, the board may postpone said hearing and set another time for the same, and notice of such day of hearing may be served on such omitted parties in the manner and for the same length of time, as provided for in this section, and by fixing such new day for hearing and by adjourning said proceedings to said time, the board of supervisors shall not be held to have lost jurisdiction of the subject matter of said proceeding, nor of any parties so previously served with notice. Personal service upon any of the parties above described in the manner and for the time required for service of original notices shall be sufficient and make publication of notice as to such persons unnecessary."

SEC. 4. Sufficiency of petition. That the law as it appears in section nineteen hundred eighty-nine-a5 (1989-a5) of the supplement to the code, 1907, be amended by striking out from line four the words "manner (matter)", and inserting in lieu thereof the word "substance".

SEC. 5. Appointment of appraisers to assess damages. That the law as it appears in section nineteen hundred eighty-nine-a5 (1989-a5) of the supplement to the code, 1907, be amended by striking out all of said section following the semi-colon after the word "adjournment", in line twenty-three, and inserting in lieu thereof the following: "and the county auditor shall appoint three appraisers to assess such damages, one of whom shall be the engineer theretofore appointed as above provided, or, in case of his absence or inability to act, some other engineer, and two freeholders of the county who shall not be interested in, nor related to any party interested in the proposed improvement."

SEC. 6. Notice of appeal—finding of court certified. That the law as it appears in section nineteen hundred eighty-nine-a6 (1989-a6) of the supplement to the code, 1907, be amended by striking out the word "ten" in line twenty-seven of said section, and inserting the word "twenty" in lieu thereof; also by striking out the period after the word "term" in line thirty-four, and inserting in lieu thereof a semi-colon and after it the words, "the finding of the court in relation to the establishment of or refusal to establish the levee or drainage district shall be certified by the clerk to the board of supervisors, who shall enter an order in harmony therewith and proceed accordingly."

SEC. 7. Bond security for payment of damages. That the law as it appears in section nineteen hundred eighty-nine-a7 (1989-a7) of the supplement to the code, 1907, be amended by striking out from lines four and five the words "upon such terms and conditions as the county auditor may deem just and proper" and inserting in lieu thereof the words, "by sufficient bond to be fixed and approved by the county auditor".

SEC. 8. Notice of letting work—how published. That the law as it appears in section nineteen hundred eighty-nine-a8 (1989-a8) of the supplement to the code, 1907, be amended by striking out the word "four" in the second line of said section and inserting the word "two" in lieu thereof.

SEC. 9. Failure to perform work—penalty. That the law as it appears in section 1989-a10 of the supplement to the code, 1907, be amended by striking out the word "shall" in line six and inserting in lieu thereof the word "may"; also by striking out the period at the close of said section and inserting in lieu thereof a semi-colon and after it the following: "or the board may cause the uncompleted work to be done, paying therefor out of the balance of the contract price not theretofore paid over to the contractor, and if the expenses of so completing the work exceed such balance of the contract price, then the board of supervisors may cause an action to be brought in the name of the county in behalf of said district for the recovery of the amount of such excess from the contractor and his bondsmen."

SEC. 10. Repeal—changes in dimensions. That the law as it appears in section nineteen hundred eighty-nine-a11 (1989-a11) of the supplement to the code, 1907, be and the same is hereby repealed and the following enacted in lieu thereof:

"If, after the establishment of said district, it shall become apparent that a levee or drain should be enlarged, deepened or otherwise changed or that a change or alteration in the location should be made for the better service thereof said board may by resolution authorize such change or changes in the said improvement as the engineer shall recommend; provided that whenever any change or changes are made either under this section or under any other section of this chapter, all persons whose land shall be taken thereby shall first have been given like notices as provided in section nineteen hundred eighty-nine-a3 (1989-a3) of this chapter, and shall have like opportunity to file claims for damages, as provided for in section nineteen hundred eighty-nine-a4 (1989-a4) of this chapter, and like opportunity to appeal from the action of

the board as provided in section nineteen hundred eighty-nine-a6 (1989-a6) of this chapter.”

SEC. 11. Assessment of costs and damages—how levied. That the law as it appears in section nineteen hundred eighty-nine-a 12 (1989-a 12) of the supplement to the code, 1907, be amended by striking out the word “county” in line eight of said section and inserting in lieu thereof the word “state”; also by inserting after the word “appointment” in line eleven the words “begin to”; also by striking out the word “assess” in line forty-three and inserting in lieu thereof the word “levy”; also by striking out the period following the word “district” in line forty-four and inserting a semi-colon in lieu thereof and after it the words “and all installments of the tax shall be levied at that time, and shall bear interest at six per cent per annum from that date; which rate may be later reduced to correspond with the rate specified in the certificates or bonds as the case may be. Provided, however, that no deferred installment of the amount assessed, as between vendor and vendee, mortgagor and mortgagee, shall become a lien upon the property against which it is assessed and levied, until the thirty-first day of December of the year next preceding that in which it is due and payable”.

SEC. 12. Benefits—how estimated. That the law as it appears in section nineteen hundred eighty-nine-a 13 (1989-a 13) of the supplement to the code, 1907, be amended by striking out the period following the word “lands” in line six thereof, and inserting in lieu thereof a comma, and after it the words “or brings an outlet nearer to said lands or relieves the same from overflow.”

SEC. 13. Appeal—drainage record. That the law as it appears in section nineteen hundred eighty-nine-a 14 (1989-a 14) of the supplement to the code, 1907, be amended by striking out all of said section following the period after the word “district” in line fourteen of said section, and inserting in lieu thereof the following:

“The board of supervisors shall be a proper party in all appeal cases, or actions attacking the proceedings of the board had and taken under the provisions of this chapter, for the purpose of representing the drainage district, and all interested parties therein, other than those prosecuting the appeal or other adversary action; and the employment of counsel by the board as authorized in this chapter shall be for the purpose of protecting all the rights of the drainage district and interested parties therein other than those prosecuting the appeal or other adversary action. In all appeals or adversary actions, the appellant or complaining party shall be entitled the plaintiff and the board of supervisors and drainage district it represents the defendant. When an appeal authorized by this chapter, is taken the county auditor shall forthwith make a transcript of the notice of appeal and appeal bond and transmit the same to the clerk of the district court, and the clerk shall docket the same upon payment by the appellant of the docket fee; and on or before the first day of the next succeeding term of the district court, the appellant shall file a petition setting forth the order or decision of the board appealed from and his claims and objections relating thereto; a failure to comply with these requirements shall be deemed a waiver of the appeal and in such case the court shall dismiss the same; it shall not be necessary for the appellee to file answer to the petition unless some affirmative defense is made thereto, but he may do so. The board shall provide a book to be known as the ‘drainage record’ and the county auditor shall keep a full and complete record therein of all proceedings of the board relating to drainage districts.”

SEC. 14. Subsequent proceedings—compensation for use of former survey returns. That the law as it appears in section nineteen hundred eighty-nine-a-16 (1989-a 16) of the supplement to the code, 1907, be amended by inserting

after the comma following the word "return" in line ten of said section the words "levels, surveys,"; and also by striking out the period at the end of said section and inserting in lieu thereof a semi-colon and adding to said section the following: "and in case the cost of said returns, levels, surveys, plat and profile made in said former proceedings have been paid for by the former petitioners or their bondsmen, then a reasonable amount shall be allowed said petitioners or bondsmen for the use of the same." And be further amended by striking out the letter "a" following the word "proceedings" in the fourth line from the end of said section and inserting in lieu thereof the word "or".

SEC. 15. Construction across railroad—cost of bridges and culverts borne by railroad. That the law as it appears in section nineteen hundred eighty-nine-a 18 (1989-a 18) of the supplement to the code, 1907, be amended by inserting after the word "bridge" and before the comma following said word in the thirtieth line of said section the words: "when such improvement is located at the place of the natural water way or place provided by the railroad company for the flow of the water"; and that said section be further amended by inserting after the word "bridge" and before the word "shall" in the thirty-third line of said section the following words and punctuation marks, viz: "when such improvement is located at the place of the natural water way or place provided by the railroad company for the flow of the water,"; and that said section be further amended by adding after the period at the end of said section the following: "All other proceedings in relation to railroads shall be the same as provided for individual property owners within the drainage district."

SEC. 16. Repeal—construction across highway. That section nineteen hundred eighty-nine-a 19 (1989-a 19) of the supplement to the code, 1907, be and the same is hereby repealed and the following enacted in lieu thereof:

"Whenever such levee, ditch, drain or change of any natural water course crosses a public highway, necessitating the removal or the building or rebuilding of any bridge or bridges, the board of supervisors shall remove, build or rebuild such bridge or bridges, paying the costs and expenses thereof from the county bridge fund. Whenever any highway within the levee or drainage district will be beneficially affected by the construction of any improvement or improvements in such district, it shall be the duty of the commissioners appointed to classify and assess benefits to determine and return in their report the amount of benefit to such highway, and notice thereof shall be served upon the clerk of the township in which said highway is located, as provided in the case of an individual property owner. The township trustees or clerk of such township may file objections to such assessment in the time and manner provided in case of land owners, and the trustees shall have the same right of appeal from the finding of the board with reference to the assessment on account of the benefits to such highway. One-fourth of such assessment shall be paid by the county from the county road fund, or from the county drainage fund, and three-fourths by the township. Such assessment may be paid by the township from its road fund, or at a regular or special meeting the township trustees may determine and certify to the board of supervisors the number of mills needed as a special drainage tax to meet the assessments that may be levied under this section, but not to exceed five (5) mills shall be so levied in any one year; and such funds when so raised shall be used for no other purposes whatever. The provisions of this section shall apply to drainage assessments heretofore levied on account of highways, which are still unpaid."

SEC. 17. Protection of drain. That the law as it appears in section nineteen hundred eighty-nine-a 22 (1989-a 22) of the supplement to the code, 1907, be amended by adding to said section the following:

“In making connections with the drainage improvements provided for in this chapter, care must be taken to so protect the drain or drains where such connection is made as to prevent damage thereto by washing out the banks or by permitting soil or silt to be carried into the public improvement, and to this end the board of supervisors may make specifications as to the manner in which all such connections shall be made.

SEC. 18. Voting powers of boards of supervisors equalized. That the law as it appears in section nineteen hundred eighty-nine-a 29 (1989-a 29) of the supplement to the code, 1907, be amended by striking out the word “ten” in line thirteen and substituting in lieu thereof the word “thirty”; also by adding to said section after the period at the end thereof, the following words: “When the boards of supervisors are of unequal number, each member of the board of the smallest number of members shall cast a full vote and each member of any larger board shall cast such fractional part of a full vote as may be determined by making the smallest number of the membership of any board the numerator and the number of the membership of any such larger board entitled to vote, the denominator of such fraction, so as to equalize the voting power of each board.”

SEC. 19. Classification of premises. That the law as it appears in section nineteen hundred eighty-nine-a 32 (1989-a 32) of the supplement to the code, 1907, be amended by striking out the word “classify” at the end of line six in said section, and inserting in lieu thereof the words “begin the work of classifying”.

SEC. 20. Notice of appeal and bond filed with auditor. That the law as it appears in section nineteen hundred eighty-nine-a 35 (1989-a 35) of the supplement to the code, 1907, be amended by adding thereto the following: “Notice of appeal and bond shall be given to and filed with the county auditor in the county where the appeal is taken.”

SEC. 21. Inspection. That the law as it appears in section nineteen hundred eighty-nine-a 44 (1989-a 44) of the supplement to the code, 1907, be amended by inserting after the comma following the word “necessary” in line four of said section, the words, “and at least once in each year”.

SEC. 22. Additional lands included in drainage district. That the law as it appears in chapter two-a of title ten of the supplement to the code, 1907, be amended by adding to said chapter as section 1989-a 54 the following:

“That after the original establishment of a drainage district, as in this chapter provided, if the said board is satisfied that additional lands should be included within any drainage district, and that said lands are benefited by the improvement therein, and that said lands should have been included in said original district, then, in such case, the board may order the engineer to make a plat of said lands, with the elevations thereof, and report thereon; and thereupon if said report be in favor of including additional lands, which shall be particularly described in the report, said board shall proceed in such matter as to said proposed annexed territory as in the original establishing of such district, including the fixing and levying of the special tax for benefits, and thereafter the said annexed territory shall be a part of said district, and governed in all respects as lands within the original district; or said annexation may be made and brought under the jurisdiction of the board for all of said purposes upon the petition of the owners of all the lands to be annexed.”

SEC. 23. In effect. This act being deemed of immediate importance shall take effect and be in full force from and after its publication in the Register

and Leader and the Des Moines Capital, newspapers published at Des Moines, Iowa.

Approved April 16, A. D. 1909.

I hereby certify that the foregoing act was published in the Register and Leader and Des Moines Capital April 19, A. D. 1909.

W. C. HAYWARD,
Secretary of State.

CHAPTER 119.

LEVEES, DITCHES, DRAINS AND WATER COURSES; PROCEEDINGS AFTER DECISION UPON APPEAL.

S. F. 429.

AN ACT to amend the law as it appears in section nineteen hundred eighty-nine-a fourteen (1989-a14) of the supplement to the code, 1907, relating to proceedings after decision upon appeal.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Order of establishment rescinded—board to proceed anew.** That the law as it appears in section nineteen hundred eighty-nine-a fourteen (1989-a 14) of the supplement to the code, 1907, be amended by adding thereto the following:

“In any case where the decree is or has been entered setting aside the establishment of a drainage district for errors in the proceedings taken, and such decree becomes final, the board of supervisors shall rescind its order establishing the drainage district, assessing benefits, and levying the tax based thereon, and shall also cancel any contract made for construction work or material, and may refund any or all assessments paid in. The board shall fix a new date for hearing, giving notice thereof by publication for two weeks and at the time so fixed, enter its order as to the establishment of the proposed district, and thereafter proceed as by law provided.”

SEC. 2. **In effect.** This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Register and Leader and the Des Moines Capital, newspapers published at Des Moines, Iowa.

Approved April 16, A. D. 1909.

I hereby certify that the foregoing act was published in the Register and Leader and Des Moines Capital April 20, A. D. 1909.

W. C. HAYWARD,
Secretary of State.

CHAPTER 120.

DRAINAGE BONDS.

S. F. 383.

AN ACT to amend the law as it appears in section nineteen hundred and eighty nine-a twenty-seven (1989-a27) of the supplement to the code, 1907, relating to drainage bonds, providing for additional levy of tax and sale of bonds in certain contingencies.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Drainage bonds.** The law as it appears in section nineteen hundred and eighty-nine-a twenty-seven (1989-a 27) of the supplement to the code, 1907, is hereby amended by inserting after the comma following the word “estimate” and before the word “a” in the fourteenth line the words “ or should the proceeds of the tax when collected be insufficient to pay the